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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/805,682	03/13/2001	William J. Labarge	DP-302561/DEP-0128	3642

7590 01/10/2003

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EXAMINER

JOHNSON, EDWARD M

ART UNIT	PAPER NUMBER
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1754

15

DATE MAILED: 01/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application N .

09/805,682

Applicant(s)

LABARGE ET AL.

Examiner

Edward M. Johnson

Art Unit

1754

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 January 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 15 and 25-29.

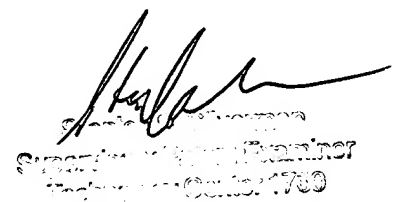
Claim(s) objected to: _____.

Claim(s) rejected: 1, 4-14, 16, 19, 20, 24 and 31.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: It is argued that the present application teaches "at least about 50 wt%" of alkaline earth component. This is not persuasive because claims must be given their broadest reasonable interpretation. In re Morris, 127 F.3d 1048, 1054-55 (Fed. Cir. 1997). It is not considered unreasonable for one skilled in the art to interpret the claimed range of "at least about 50%" as incorporating at least some of the values encompassed by the prior art range of "0.1 to about 35%". It is argued that the Examiner has stated no basis for the assertion that "It is not considered unreasonable". This is not persuasive because the basis, as stated previously by the Examiner is the disclosure of about 35%, which is considered to overlap the broadest reasonable interpretation of the instantly claimed range. It is argued that in other words, some of the ingredients of Mabilon may be the same. This is not persuasive because Applicant claims an ion exchanged zeolite, and Wormsbecher discloses that the "spray dried catalyst... comprising from 5 to 80 percent alkaline earth metal component, is washed and ion exchanged..." Applicant appears to suggest because Wormsbecher also discloses nonexchanging at the time of addition of alkaline earth, the claims are allowable. This is not persuasive because Applicant merely claims an exchanged alkaline earth zeolite, not a zeolite that was exchanged when the alkaline earth was added. It is noted that the features upon which applicant relies (i.e., a zeolite that was exchanged at the time alkaline earth metal was added) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Further, because the zeolite of Mabilon is impregnated, at least some of the alkaline earth would be exchanged. Applicant does not appear to offer any argument or evidence to the contrary. It is argued that Wormsbecher is directed to a "Catalyst Cracking Catalyst and Process". This is not persuasive because Wormsbecher does not "teach away" from the instant claims, since Wormsbecher does not disclose that an already exchanged zeolite may not be used. Rather, Wormsbecher discloses that the "spray dried catalyst... comprising from 5 to 80 percent alkaline earth metal component, is washed and ion exchanged..." Applicant appears to suggest because Wormsbecher also discloses nonexchanging at the time of addition of alkaline earth, the claims are allowable. This is not persuasive because Applicant merely claims an exchanged alkaline earth zeolite, not a zeolite that was exchanged when the alkaline earth was added. It is noted that the features upon which applicant relies (i.e., a zeolite that was exchanged at the time alkaline earth metal was added) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). It is argued that the Examiner suggests adding the zeolite of Brownscombe to the perovskite of Campbell. This is not persuasive because Mabilon teaches alkaline earth exchanged zeolite catalysts and Brownscombe discloses his alkaline earth exchanged zeolite as shape selective catalyst (see column 1, line 20) and as supports for catalytic components (see column 2, lines 28-30). It is argued that with respect to the combination of Wormsbecher and Campbellas suggested by the Examiner, Wormsbecher specifically teaches away from such a combination. This is not persuasive because Wormsbecher discloses an exchanged alkaline earth zeolite catalyst (see above) and wherein the alkaline earth is not exchanged -only at the time it is added- (see above). Applicant does not claim a zeolite that is exchanged at any specific time at all, much less at the specific time of addition of alkaline earth. The Examiner contends that Demmel discloses a catalyst comprising 50-95% calcium oxide. This is not persuasive because Wormsbecher does not "teach away" from an ion exchanged zeolite and it is considered that it would have been obvious to one of ordinary skill in the art at the time the invention was made to use an alkaline earth exchanged zeolite because Demmel discloses alkaline earth impregnated zeolites for a density better suited for homogeneous fluidization (see column 3, lines 21-28 and column 6, lines 7-14).



Examiner
S. J. [illegible]
[illegible]
[illegible]